

**THE COMPETITION TRIBUNAL**

**IN THE MATTER OF** the *Competition Act*, R.S.C. 1985, c. C-34, as amended; and

**IN THE MATTER OF** an application for orders pursuant to section 74.1 of the *Competition Act* for conduct reviewable pursuant to paragraph 74.01(1)(a) and sections 74.05 and 74.011 of the *Competition Act*.

**B E T W E E N:**

|  |     |
|--|-----|
| COMPETITION TRIBUNAL<br>TRIBUNAL DE LA CONCURRENCE   |     |
| FILED / PRODUIT<br>CT-2015-001<br>April 29, 2015<br>Jos LaRose for / pour<br>REGISTRAR / REGISTRAIRE |     |
| OTTAWA, ONT  | # 5 |

THE COMMISSIONER OF COMPETITION

Applicant

- and -

AVISCAR INC., BUDGETCAR INC. / BUDGETAUTO INC.,  
and AVIS BUDGET GROUP, INC. and AVIS BUDGET CAR RENTAL, LLC

Respondents

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**AMENDED NOTICE OF APPLICATION**

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**TAKE NOTICE** that the Commissioner of Competition (the “**Commissioner**”) will make an application to the Competition Tribunal (the “**Tribunal**”) for an order pursuant to section 74.1 of the *Competition Act*, R.S.C. 1985, c. C-34 (the “**Act**”), as amended, in respect of conduct reviewable pursuant to paragraph 74.01(1)(a), section 74.05 and subsections 74.011(1) and (2) of the Act.

**AND TAKE NOTICE** that the Commissioner relies on the following Statement of the Grounds and Material Facts for this application.

**TO:** **AVISCAR INC.**  
1 Convair Drive E.  
Etobicoke, Ontario  
M9W 6Z9  
Canada

**AND TO:** **BUDGETCAR INC. / BUDGETAUTO INC.**  
1 Convair Drive E.  
Etobicoke, Ontario  
M9W 6Z9  
Canada

**AND TO:** **AVIS BUDGET GROUP, INC.**  
6 Sylvan Way  
Parsippany, New Jersey  
07054  
United States of America

**AND TO:** **AVIS BUDGET CAR RENTAL, LLC**  
6 Sylvan Way  
Parsippany, New Jersey  
07054  
United States of America

## APPLICATION

1. The Commissioner makes this application pursuant to section 74.1 of the Act for:
  - (a) a declaration that each Respondent is engaging in or has engaged in reviewable conduct, contrary to paragraph 74.01(1)(a), section 74.05 and subsections 74.011(1) and (2) of the Act;
  - (b) an order prohibiting each Respondent from engaging in the reviewable conduct or substantially similar reviewable conduct, in Canada, for a period of ten years from the date of such order;
  - (c) an order requiring each Respondent to publish or otherwise disseminate notices of the determinations made herein pursuant to paragraph 74.1(1)(b) of the Act, in such manner and at such times as the Commissioner may advise and this Tribunal shall permit;
  - (d) an order requiring each Respondent Aviscar Inc., Budgetcar Inc. and the Parent Companies (defined below) to pay an administrative monetary penalty in the amount of \$10,000,000;
  - (e) an order requiring the Respondents to jointly and severally reimburse current and former customers an amount reflective of, but not to exceed, revenue collected and retained in association with, or resulting from, the reviewable conduct between 12 March 2009 and the date of the order, to be distributed among the persons who rented passenger vehicles from the Respondents or their affiliates in such a manner as this Tribunal considers appropriate;
  - (f) costs; and
  - (g) such further and other relief as the Commissioner may advise and this Tribunal may permit.

## I. OVERVIEW

2. The Respondents – among the largest rental car companies carrying on business in Canada – are engaging in deceptive marketing practices. They have made, and are continuing to make, representations to the public that are false or misleading in a material respect about the price consumers must pay to rent their passenger vehicles and associated products in Canada. They do so at the expense of Canadian consumers to promote their passenger vehicles rentals, their associated products and their business interests more generally.
3. As described below, the Respondents promote their products to the public at prices or discounts that are not in fact attainable. The Respondents' representations create the general impression that consumers can rent their cars and associated products for less than what the Respondents actually charge. The Respondents' representations are false or misleading in a material respect because the Respondents require consumers to pay additional Non-Optional Fees (defined below). The Respondents further represent these Non-Optional Fees (when they ultimately do reveal them) as taxes, surcharges and/or fees that rental car companies are required to collect from consumers, notwithstanding that it is the Respondents themselves who choose to impose these Non-Optional Fees on consumers to recoup part of their own cost of doing business.
4. The Respondents' Non-Optional Fees increase the cost of a rental by up to approximately 35%, depending on the rental location and type of vehicle.
5. The Respondents' false or misleading representations pervade their extensive marketing to the public, examples of which are particularized below. The Respondents however make various substantially similar false or misleading representations in a variety of media that are not limited to the representations particularized below.

6. The Commissioner brings this application to stop the Respondents' deceptive marketing practices and to remedy the harm these practices have caused to Canadian consumers.

## II. THE PARTIES

7. The Commissioner is an officer appointed by the Governor in Council under section 7 of the Act and is responsible for the administration and enforcement of the Act.
8. The Respondents Aviscar Inc. and Budgetcar Inc./Budgetauto Inc. are private corporations organized and existing under the laws of Canada, with head offices in Etobicoke, Ontario. Aviscar Inc. and Budgetcar Inc. operate a car rental services business throughout Canada.
9. The Respondent Avis Budget Group, Inc. ("**Avis Budget Group**") is a publicly-traded company organized and existing under the laws of Delaware. Directly, or through its subsidiaries, including Aviscar Inc. and Budgetcar Inc. and Avis Budget Car Rental, LLC ("**ABC Rental**"), Avis Budget Group and its licensees operate the Avis and Budget brands of rental cars in approximately 175 countries throughout the world.
10. The Respondent ABC Rental is a limited liability company organized and existing under the laws of Delaware. ABC Rental is a parent company of Aviscar Inc. and Budgetcar Inc.
11. The Respondents Avis Budget Group and ABC Rental are collectively referred to hereafter as the **Parent Companies**. ~~Avis Budget Group is the parent company of Aviscar Inc. and Budgetcar Inc./Budgetauto Inc., and in this capacity.~~ The Parent Companies planned, directed and werewas ultimately, essential to the making of the representations that are subject to this application.

12. The Respondents Aviscar Inc., ABC Rental and Avis Budget Group are collectively referred to hereafter as **Avis**. The Respondents Budgetcar Inc./Budgetauto Inc., ABC Rental and Avis Budget Group are collectively referred to hereafter as **Budget**.

### III. THE RESPONDENTS' FALSE OR MISLEADING REPRESENTATIONS

#### A. Respondents Promote their Products to the Public at Prices or Discounts that are not Attainable

13. The Respondents' representations create the general impression that consumers can rent passenger vehicles and associated products at prices or discounts that the Respondents represent.
14. Consumers cannot, however, rent passenger vehicles and associated products from Avis and Budget at the prices the Avis and Budget represent. Consumers instead pay higher prices or receive lower discounts than the Respondents' representations convey.
15. Consumers pay higher prices or receive lower discounts than the Respondents represent because the Respondents require consumers to pay extra non-optional fees to rent passenger vehicles and associated products from them (the "**Non-Optional Fees**").
16. For rentals under the Avis brand, Avis has chosen to impose various Non-Optional Fees. Avis has chosen to charge consumers for an increasing variety of Non-Optional Fees, including the following:

| English                    | Français                         | Introduced by Avis |
|----------------------------|----------------------------------|--------------------|
| Concession Recovery Fee    | Frais de redevance aéroportuaire | 1998               |
| Premium Location Surcharge | Surtaxe emplacement de prestige  | 1998               |
| Vehicle License Fee        | Frais d'immatriculation du       | 2001               |

| <b>English</b>            | <b>Français</b>                        | <b>Introduced by Avis</b> |
|---------------------------|--|---------------------------|
|                           | véhicule                               |                           |
| AC Excise Tax             | Taxe d'accise sur la climatisation     | 2001                      |
| Energy Recovery Fee       | Frais de récupération d'énergie        | 2008                      |
| Tire Management Fee       | Taxe de mise au rebut des pneumatiques | 2008                      |
| Parking Surcharge         | Surtaxe stationnement                  | 2008                      |
| Ontario Environmental Fee | Taxe environnementale de l'Ontario     | 2009                      |

17. Avis also requires consumers to pay other Non-Optional Fees, such as “Other Fees” or “Autres frais”.
18. For rentals under the Budget brand, Budget has chosen to impose various Non-Optional Fees on its customers, which have also increased in number over time, including the following:

| <b>English</b>      | <b>Français</b>                        | <b>Introduced by Budget</b> |
|---------------------|--|-----------------------------|
| Concession Recovery | Frais de redevance aéroportuaire       | 1998                        |
| Car Tax             | Frais d'immatriculation des véhicules  | 2001                        |
| Energy Recovery Fee | Frais de récupération d'énergie        | 2008                        |
| Tire Management Fee | Taxe de mise au rebut des pneumatiques | 2008                        |
| Ont Environ Fee     | Taxe environnementale de l'Ontario     | 2009                        |

19. Budget also mandates other Non-Optional Fees on its customers, such as “Fees” or “Frais supplémentaires”.
20. The Non-Optional Fees Avis and Budget charge for passenger vehicles and associated products are known to the Respondents at the time they make their price or discount representations to the public. The Respondents nevertheless exclude these Non-Optional Fees from the representations they make to promote their rental cars, associated products and business interests.
21. The Respondents’ Non-Optional Fees increase the cost of a rental by up to approximately 35%, depending on the rental location and type of vehicle.

**B. Respondents Represent Non-Optional Fees as Mandated by Third Parties**

22. In addition, when the Respondents ultimately do reveal their Non-Optional Fees, their representations are themselves false or misleading in a material respect.
23. The Respondents’ representations create the general impression that their Non-Optional Fees are taxes, surcharges or fees that governments and authorized agencies require rental car companies to collect from consumers.
24. The Non-Optional Fees are not charges that governments and authorized agencies require rental car companies to collect from consumers. Instead, they are charges the Respondents themselves choose to impose on consumers to recoup part of their own cost of doing business.

**IV. Examples of the Respondents’ False or Misleading Representations**

25. The dates, places and media in which the Respondents have made such false or misleading representations to the public are known to them. They have made these false or misleading representations to the public since 1997 or thereabouts and continue to make them.



26. The places and media include representations the Respondents make on their print advertisements, websites, mobile applications, commercials and through other means.

27. Examples of the Respondents' false or misleading representations are set out below.


**A. Examples of the Respondents' False or Misleading Avis Representations**

**(i) *Example of False or Misleading Newspaper Ad***

28. Avis displays prices and percentage discounts in newspaper advertisements that are not attainable. For example, Avis placed the following advertisement in the Toronto Metro Newspaper on or about 8 March 2011, 22 March 2011 and 5 April 2011. The representation conveys the general impression that it is possible for a consumer to obtain a 2-Day Weekend Rental for \$55 and additional days for \$21 per day.



**AVIS**  
DELIVERS GREAT  
WEEKEND RATES



**2-Day Weekend Rental Rates Starting at \$55!**  
And each additional day (to a maximum of 5 days) from \$21/day.  
Plus earn 1,000 Bonus Aeroplan® Miles.\*

For details and to reserve visit  
[avis.ca/metro](http://avis.ca/metro)  
or call 1 800 TRY-AVIS  
(879-2847)

Must quote AWD # H900200  
and Coupon # MCAA009

**aeroplan**

**AVIS**  
We try harder.

\*Terms & Conditions apply. Rates quoted are valid on a sub-compact or compact car. Special rates also available on mid-size cars (group C). Offers valid at off-airport locations in the GTA until June 19, 2011. Blackout periods apply.  
©2011 Aviscar, Inc. All Rights Reserved. \*Avis is a registered trademark licensed to Aviscar, Inc. for use in Canada.  
\*Aeroplan is a registered trademark of Aeroplan Canada Inc.

29. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to obtain a 2-Day Weekend Rental for \$55 or obtain additional days for \$21 per day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

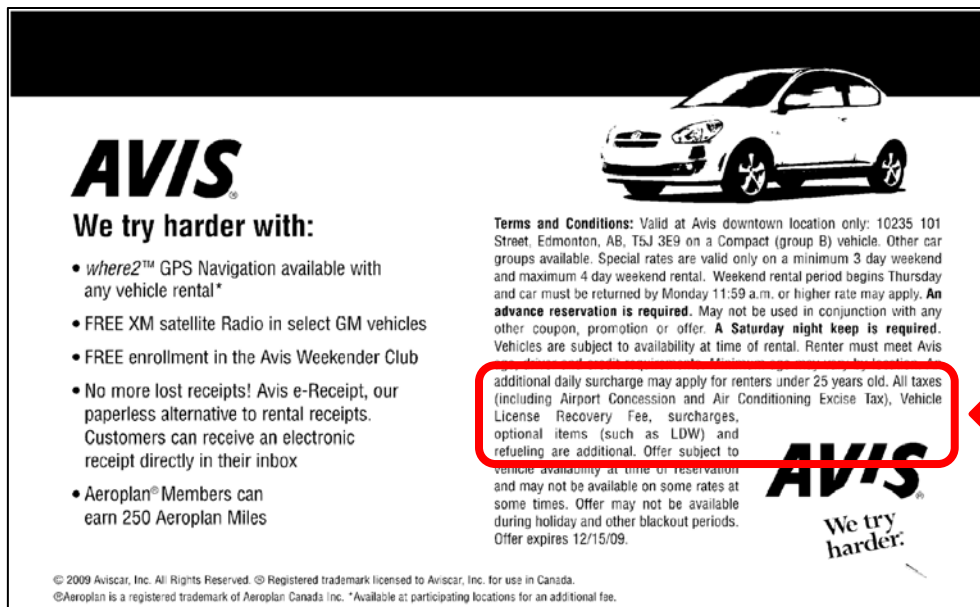
(ii) **Example of False or Misleading Promotional Flyer**

30. Avis displays prices and percentage discounts in its promotional flyers that are not attainable. For example, Avis mailed the following postcard to Edmonton residents in September 2009. The representation conveys the general impression that it is possible for a consumer who joins the Avis Weekender Club to rent a car for \$14.99 per weekend day.



31. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a car for \$14.99 per weekend day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

32. Avis' representation is false or misleading in a material respect for an additional reason. The fine print on the back of Avis' postcard states: "All taxes (including Airport Concession and Air Conditioning Excise Tax), Vehicle License Recovery Fee, surcharges, optional items (such as LDW) and refuelling are additional ..." [emphasis added]. This statement conveys the general impression that Avis' Non-Optional Fees are taxes, fees or surcharges that rental car companies are required to collect from consumers.



33. The fine print on the back of Avis' postcard is false or misleading in a material respect. Avis' Non-Optional Fees are not taxes, fees or surcharges that rental car companies are required to collect from consumers. Rather, Avis' Non-Optional Fees are charges that Avis itself chooses to impose on consumers to recoup part of its own cost of doing business.

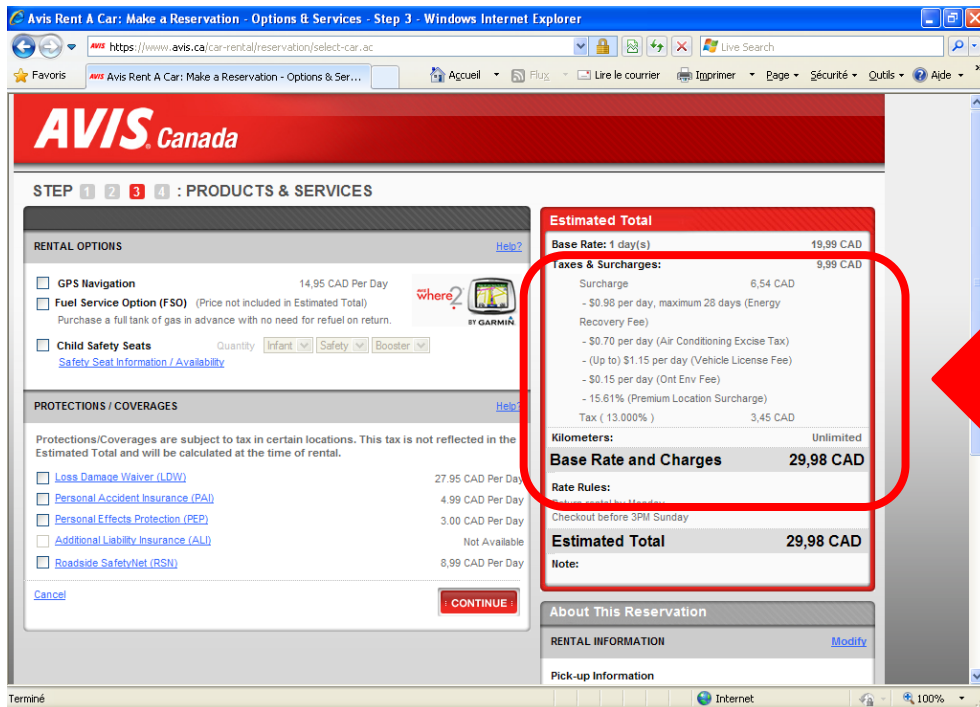
(iii) **Example of False or Misleading Website Representations**

34. Avis displays prices and percentage discounts on its websites that are not attainable. For example, the following representations appeared on an Avis website on or about 5 June 2012. Avis' representation conveys the general impression that it is possible for consumers to rent a car for \$19.99 per weekend day or save 35% on their rental.



35. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a car for \$19.99 per weekend day or save 35% on his or her rental. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

36. Avis' representation about the prices and percentage discounts on its websites are also false or misleading in a material respect for an additional reason. As set out in the example below from on or about 5 June 2012, Avis' representation conveys the general impression that its Non-Optional Fees are taxes and surcharges that rental car companies are required to collect from consumers.



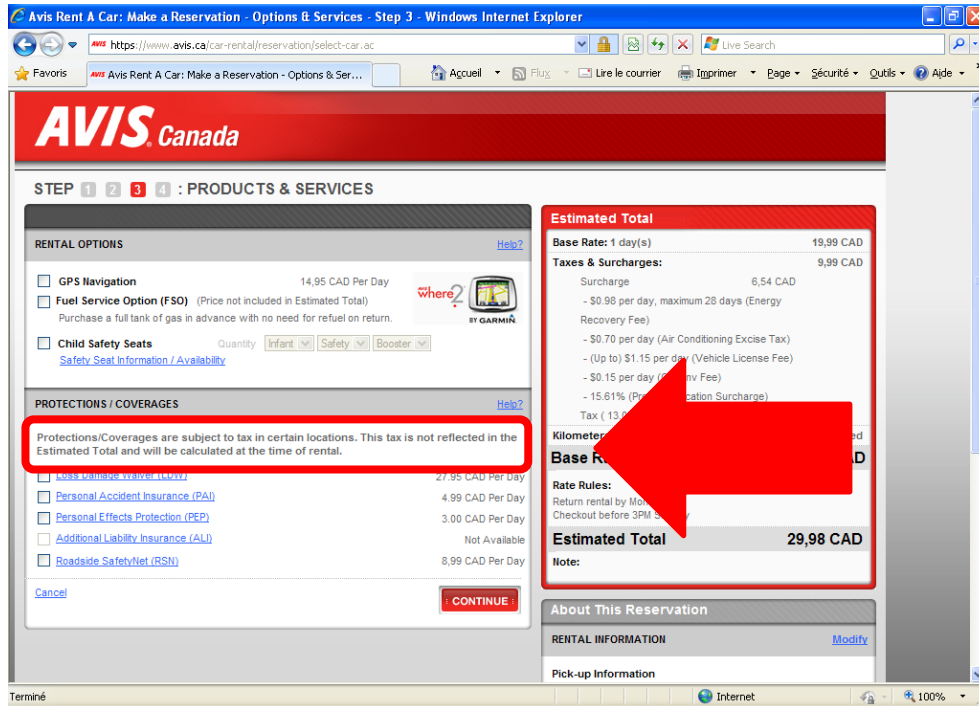
37. Avis' representation is false or misleading in a material respect as it is Avis that chooses to impose these Non-Optional Fees on consumers to recoup part of its own cost of doing business.

38. Further, Avis' representation set out at paragraph 3436 above is false or misleading in a material respect for two additional reasons. First, Avis' representation conveys the general impression that it is possible for a consumer to rent a GPS Navigation Unit for \$14.95 per day and/or obtain additional protections/coverages for daily rates that Avis specifies on its webpage.



39. Avis' representation set out at paragraph 3638 (and 3436) above is false or misleading in a material respect. It is not possible for a consumer to rent a GPS Navigation Unit for \$14.95 per day from an airport location and/or obtain additional protections/coverages for rates that Avis specifies. A consumer would instead have to pay higher prices than Avis represents because Avis requires consumers to pay additional Non-Optional Fees to rent or obtain these associated products.

40. Second, Avis' representation set out at paragraph 3638 (and 3436) above conveys the general impression that governments require rental companies to collect taxes from consumers who obtain additional protections/coverages from certain locations. Avis states "Protections/Coverages are subject to tax in certain locations. This tax is not reflected in the Estimated Total and will be calculated at the time of rental" [emphasis added].

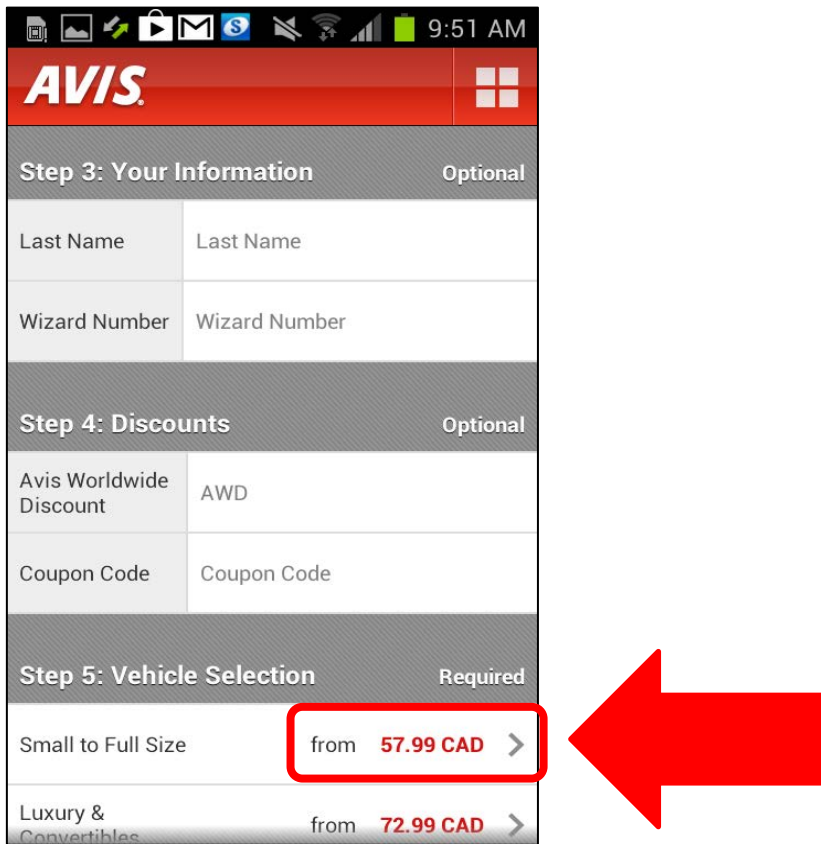


41. Avis' representation is false or misleading in a material respect. Governments do not require rental car companies to collect additional taxes from consumers who obtain additional protections/coverages from certain locations. Avis rather chooses to charge consumers additional Non-Optional Fees at these locations to recoup part of its own cost of doing business.
42. Avis also increases the price of its protections/coverages by charging consumers Non-Optional Fees. Avis chooses to do so to recoup part of its own cost of doing business.



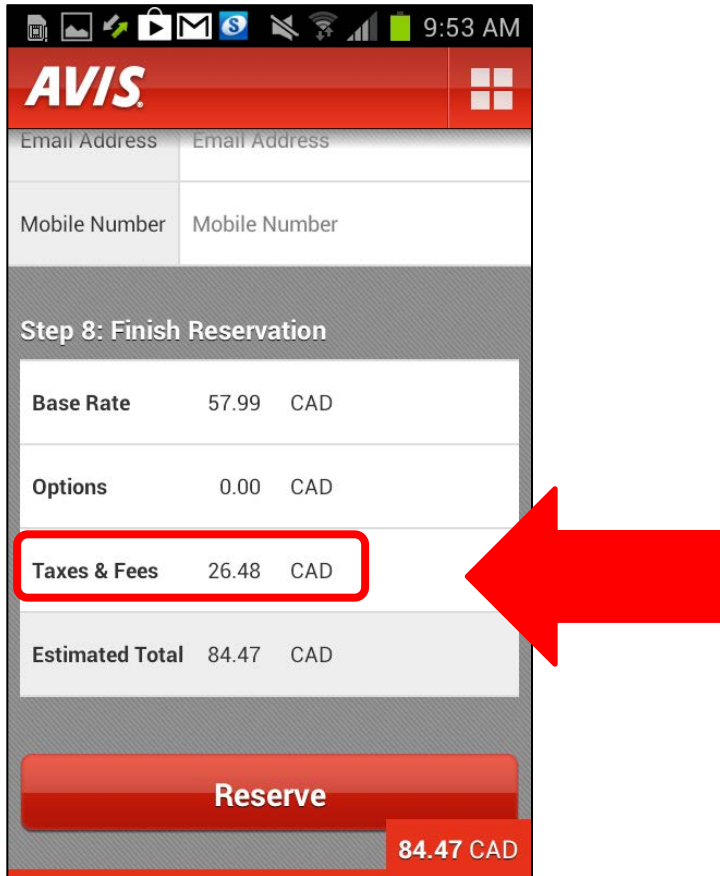
(iv) **Example of False or Misleading Mobile Application Representations**

43. Avis displays prices on its mobile applications that are not attainable. For example, the following representation appeared on Avis' mobile application on or about 3 December 2012. Avis' representation conveys the general impression that it is possible for a consumer to rent a small to full size vehicle for \$57.99.



44. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent a small to full size vehicle for \$57.99. A consumer would instead have to pay higher prices than Avis represents because Avis requires consumers to pay additional Non-Optional Fees.

45. Avis' representation is false or misleading in a material respect for an additional reason. Avis' representation conveys the general impression that rental car companies are required to collect additional taxes and fees.



46. Avis' representation is false or misleading in a material respect. Rental car companies are not required to collect additional taxes and fees from consumers. Avis rather chooses to charge consumers additional Non-Optional Fees to recoup part of its own cost of doing business.

(v) ***Example of False or Misleading Oral Representations***

47. Avis orally represents prices that are not attainable. For example, in June 2011, the following on-hold script ran across all Canadian Avis locations (excluding Winnipeg and Ottawa). The representation conveys the general impression that it is possible for a consumer to rent a FIAT 500 for \$55 per day:

Rent the NEW, fuel-efficient FIAT 500 at Avis today and earn Bonus Aeroplan Miles! **Rent the FIAT 500 from \$55 per day** and receive 500 Bonus Aeroplan Miles. Applicable coupon number and AWD number must be quoted. Visit [avis.ca](http://avis.ca) or ask your Avis representative for more details. [Emphasis added]

48. Avis' representation is false or misleading in a material respect because it is not possible for a consumer to rent the FIAT 500 for \$55 per day. Avis instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Avis represents.

(vi) ***Examples of False or Misleading Customer Service Scripts***

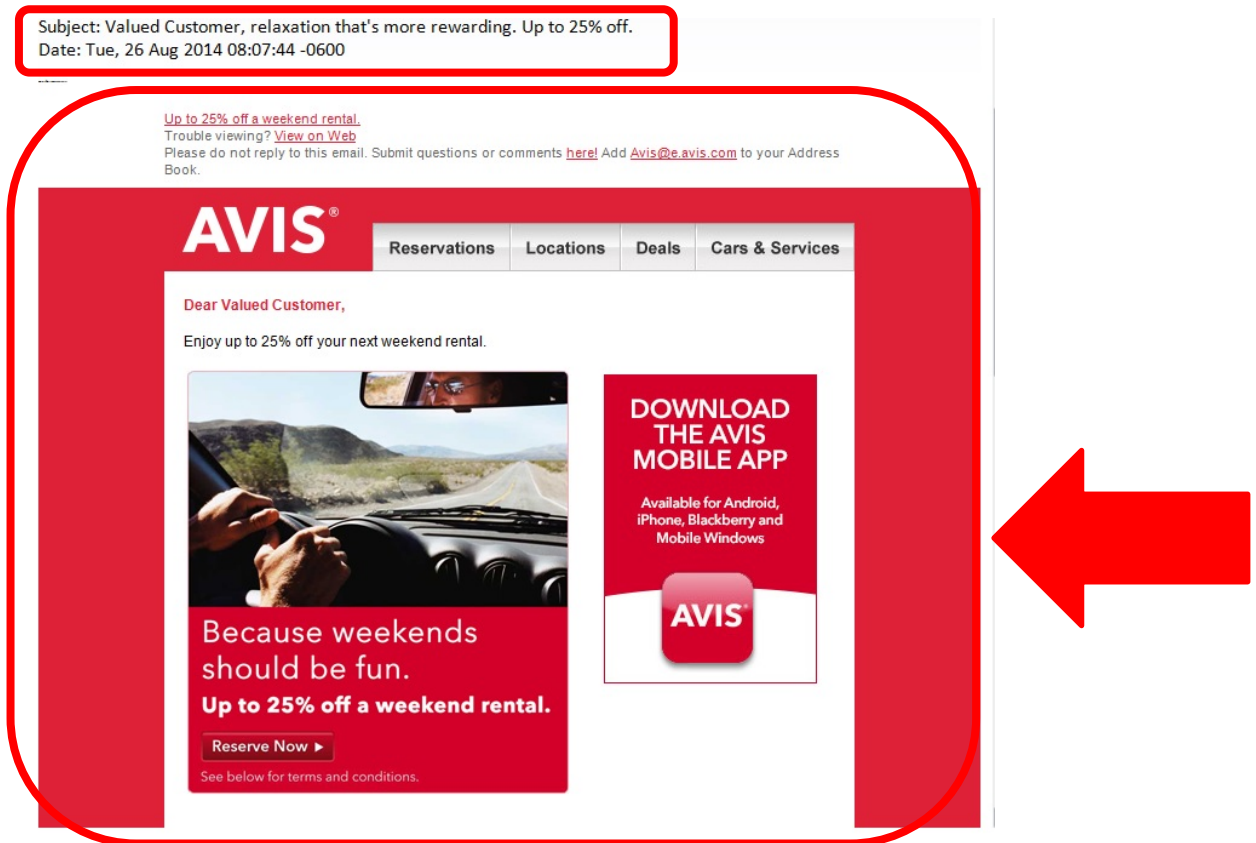
49. Avis makes representations to its customers who seek an explanation of their total rental charges. In form emails sent to its customers, Avis represents that the government and other authorized agencies mandate all rental companies, including Avis, to collect the Non-Optional Fees from customers. Avis states:

Please be aware that in addition to the base car rental rate **customers are required to pay taxes, surcharges, and other rental related fees, which are mandated by the government and other authorized agencies. All rental companies, including Avis, must collect them in order to continue to provide the appropriate services to our customers.** [Emphasis added]

50. Avis' representation is false or misleading in a material respect. Governments and other authorized agencies do not mandate all rental companies, including Avis, to collect Non-Optional Fees from their customers. Avis instead chooses to impose these Non-Optional Fees on its customers to recoup part of its own cost of doing business.

(vii) **Example of False or Misleading Subject Matter Information and Electronic Message**

51. Avis sends or causes to be sent false or misleading electronic messages. The subject matter information for these messages is false or misleading. The electronic messages themselves are also false or misleading in a material respect. For example, on 26 August 2014, Avis sent or caused to be sent the following electronic message. The subject matter information and the electronic message itself conveys the general impression that it is possible for a consumer to save up to 25% off his or her next weekend rental.



52. The subject matter information for the electronic message is false or misleading. Avis does not apply the discount to its Non-Optional Fees or the total cost of the weekend rental. Accordingly, it is not possible for a consumer to obtain up to 25% off a weekend rental. A consumer must instead pay more to obtain a weekend rental than Avis represents. The electronic message is itself false or misleading in a material respect for the same reason.

**B. Examples of the Respondents' False or Misleading Budget Representations**

**(i) Example of False or Misleading Newspaper Ad**

53. Budget displays prices and percentage discounts in newspaper advertisements that are not attainable. For example, Budget placed the following advertisement in the Toronto Metro Newspaper eight times in April and May, 2013. The representation conveys the general impression that it is possible for a consumer to rent a sub-compact vehicle for \$19.95 per weekend day.

**Savings worthy of a mini-vacay.**

Sub-compact vehicle  
**\$19.95/weekend days\***

Explore Toronto or plan a weekend getaway.  
Rent for 2 days or more and enjoy big savings when you use BCD # D601800.

Visit [budget.ca](http://budget.ca) or call 1 800 268-8900



\*Terms & conditions: Rate available for rentals from April 18, 2013 through June 30, 2013 at participating Toronto AIRPORT and OFF-AIRPORT locations. Rate applies to sub-compact vehicle only (group A). Weekend rentals require Thursday noon to Friday pick-up and Monday return. Friday night over-stay is required. Minimum 2-day keep is required. Vehicles and rates are subject to availability. Holiday and other blackout periods may apply. Vehicle must be returned to rental location. Rates are non-discountable and cannot be combined with any other coupon, discounted rate or promotional offer. Rates are quoted in Canadian dollars. Renter must meet Budget age, driver and credit requirements. Minimum age is 25 but may vary by location. An additional daily surcharge may apply for renters under 25 years old. In some all taxes (including Airport Concession and Air Conditioning Excise Tax, Vehicle License Recovery Fee, surcharges and optional items are additional). Fuel charges are extra. KM restrictions apply on all Specialty Vehicles. Please mention BCD#D601800 to take advantage of this offer.  
©2013 Budgetcar Inc. All Rights Reserved. Budget is a registered trademark licensed to Budgetcar Inc. for use in Canada.

54. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a sub-compact vehicle for \$19.95 per weekend day. Budget instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Budget represents.
55. Budget's representation set out at paragraph 5453 above is false or misleading in a material respect for an additional reason. The fine print on the bottom of Budget's advertisement states: "In Toronto **all taxes (including Airport Concession and Air Conditioning Excise Tax, Vehicle License Recovery Fee, surcharges and optional items are additional)**" [emphasis added]. The fine print conveys the general impression Budget's Non-Optional Fees are taxes the government requires rental companies to collect from consumers.



**Savings worthy  
of a mini-vacay.**



Sub-compact vehicle  
**\$19.95/weekend days\***

Explore Toronto or plan a weekend getaway.  
Rent for 2 days or more and enjoy big savings  
when you use BCD # D601800.

Visit [budget.ca](http://budget.ca) or call 1 800 268-8900



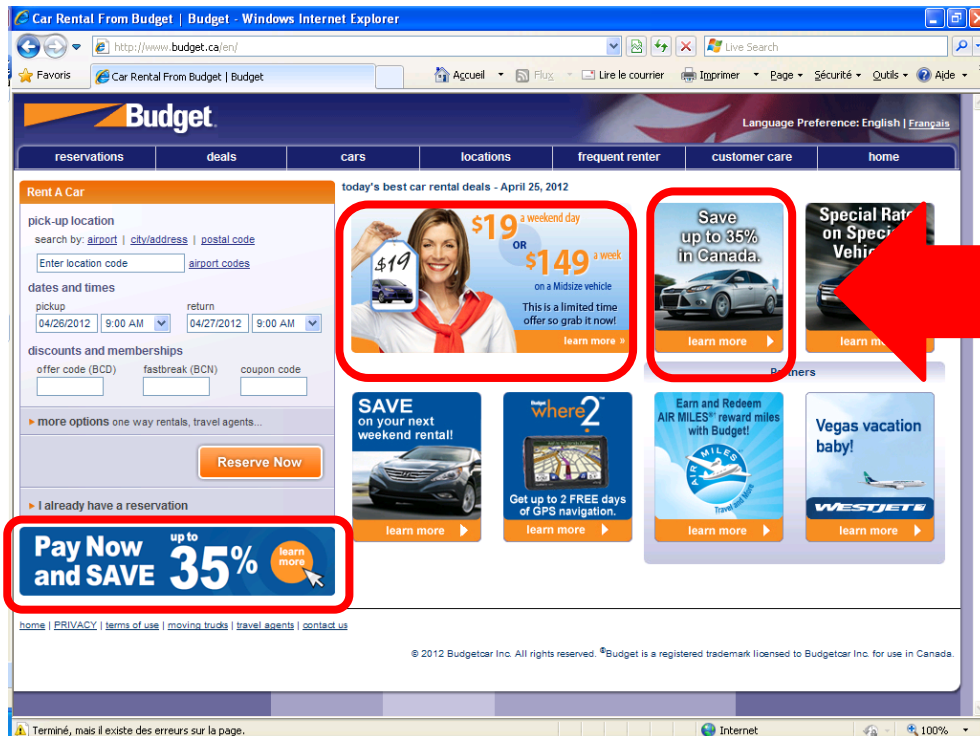
\*Terms & conditions: Rate available for rentals from April 18, 2013 through June 30, 2013 at participating Toronto AIRPORT and OFF AIRPORT locations. Rate applies to sub-compact vehicle only (group A). Weekend rentals require Thursday noon to Friday pick-up and Monday return. Friday night over-stay is required. Minimum 2-day keep is required. Vehicles and rates are subject to availability. Holiday and other blackout periods may apply. Vehicle must be returned to rental location. Rates are non-discountable and cannot be combined with any other coupon, discounted rate or promotional offer. Rates are for weekly rentals. Vehicle license recovery fee, surcharges and optional items are additional. Age may apply for renters under 25 years. All charges are extra. KM restrictions apply.

©2013 Budgetcar Inc. All Rights Reserved. Budget is a registered trademark licensed to Budgetcar Inc. for use in Canada.

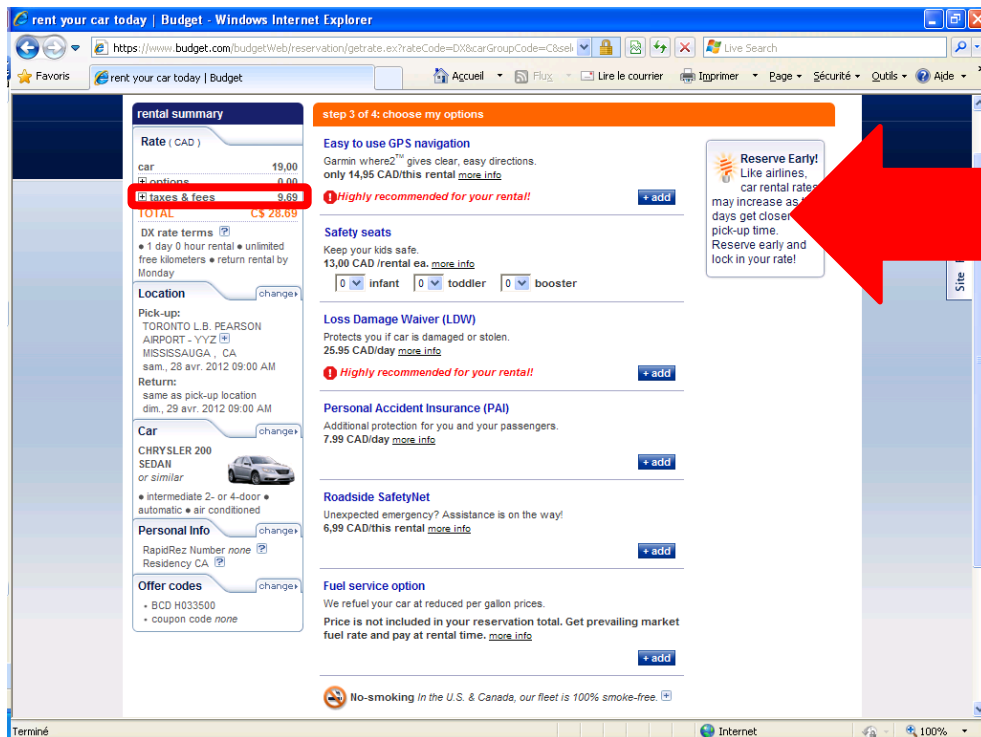
56. The fine print on the bottom of Budget's advertisement is false or misleading in a material respect as Budget's Non-Optional Fees, such as its Airport Concession and Air Conditioning Excise Tax and Vehicle License Recovery Fee, are not taxes the government requires rental companies to collect from consumers. Budget's Non-Optional Fees are charges that Budget itself chooses to impose on consumers to recoup part of its own cost of doing business.

(ii) **Example of False or Misleading Website Representations**

57. Budget displays prices and percentage discounts on its websites that are not attainable. For example, the following representation appeared on a Budget website on or about 25 April 2012. Budget's representation conveys the general impression that it is possible for a consumer to rent a car for \$19 a weekend day, \$149 a week on a midsize vehicle or save 35% on their rental.



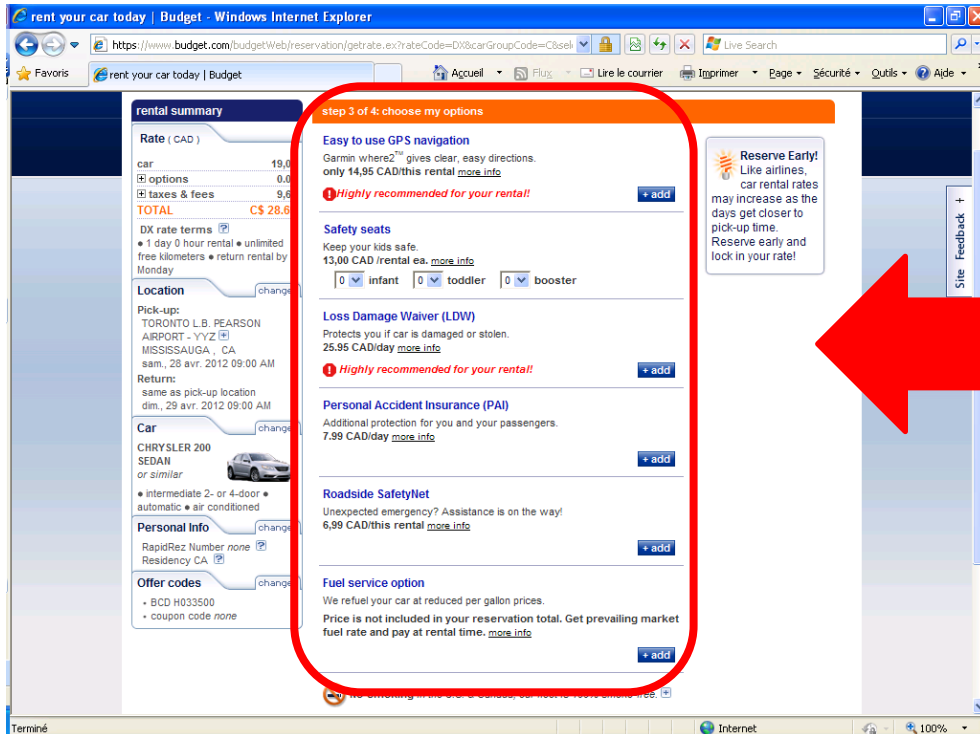
58. Budget's representation is false or misleading in a material respect. It is not possible for a consumer to rent a car for for \$19 a weekend day, \$149 a week on a midsize vehicle or save 35% on their rental. Budget instead requires consumers to pay additional Non-Optional Fees that increase the cost of the rental above the price Budget represents.
59. Budget's representation about the prices and percentage discounts on its website are also false or misleading in a material respect for an additional reason. As set out in the example below from on or about 25 April 2012, Budget's representation conveys the general impression that rental companies are required to collect additional taxes and fees from consumers.



60. Budget's representation is false or misleading in a material respect as it is Budget that chooses to impose its Non-Optional Fees on consumers to recoup part of its own cost of doing business.



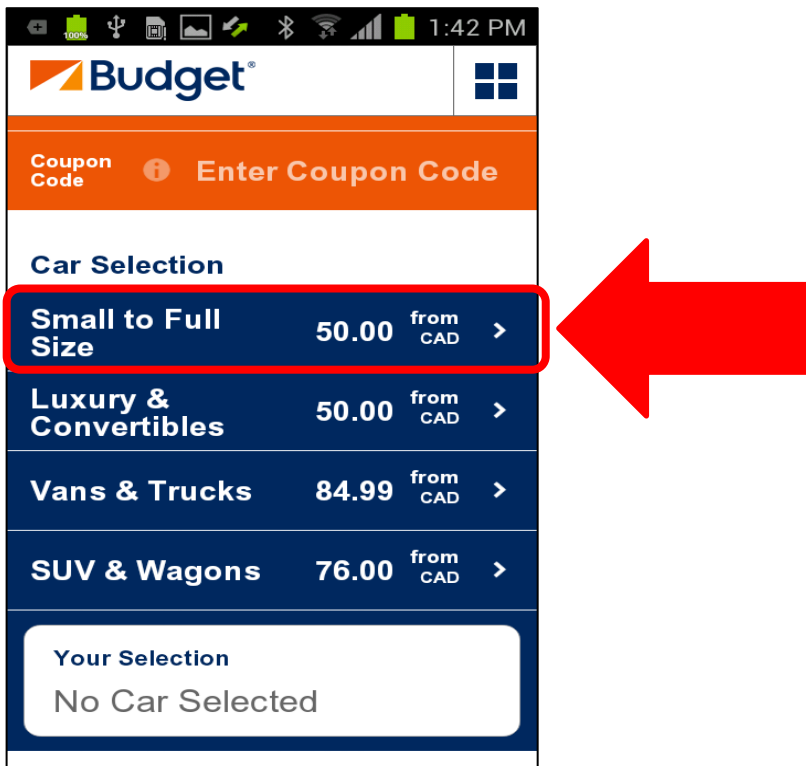
61. Further, Budget's representation set out at paragraph 5759 above is false or misleading for an additional reason. Budget's representation conveys the general impression that it is possible for consumers to obtain options such as a GPS navigation unit for \$14.95, a child safety seat for \$13, a loss damage waiver for \$25.95 per day, personal accident insurance for \$7.99 per day and/or roadside safety assistance for \$6.99.



62. Budget's representation set out at paragraph 5961 (and 5759) above is false or misleading in a material respect. It is not possible for a consumer to obtain options such as a GPS navigation unit for \$14.95, a child safety seat for \$13, loss damage waiver for \$25.95 per day, personal accident insurance for \$7.99 per day or roadside safety assistance for \$6.99. A consumer would instead have to pay a higher price because Budget requires consumers to pay additional Non-Optional Fees to obtain these options.

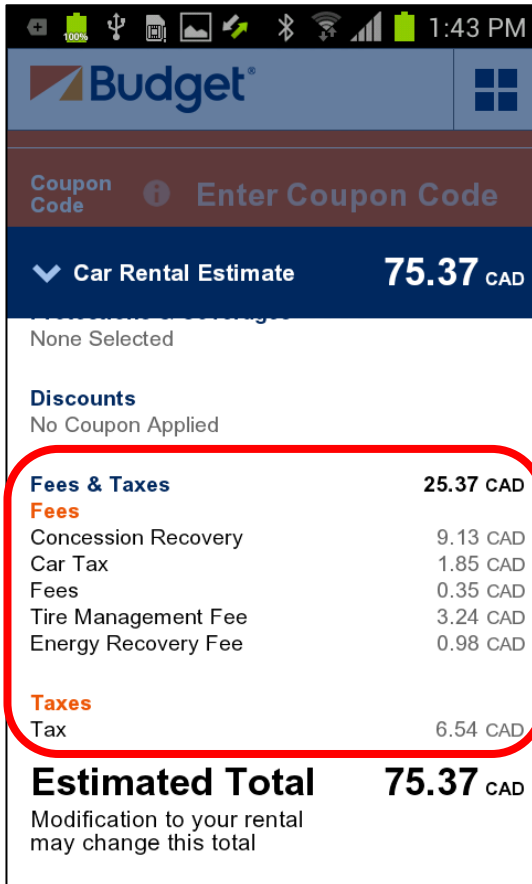
**(iii) Example of False or Misleading Mobile Application Representations**

63. Budget displays prices on its mobile applications that are not attainable. For example, the following representation appeared on Budget's mobile application on or about 10 June 2014. Budget's representation conveys the general impression that it is possible for a consumer to rent a small to full size car for \$50.00.



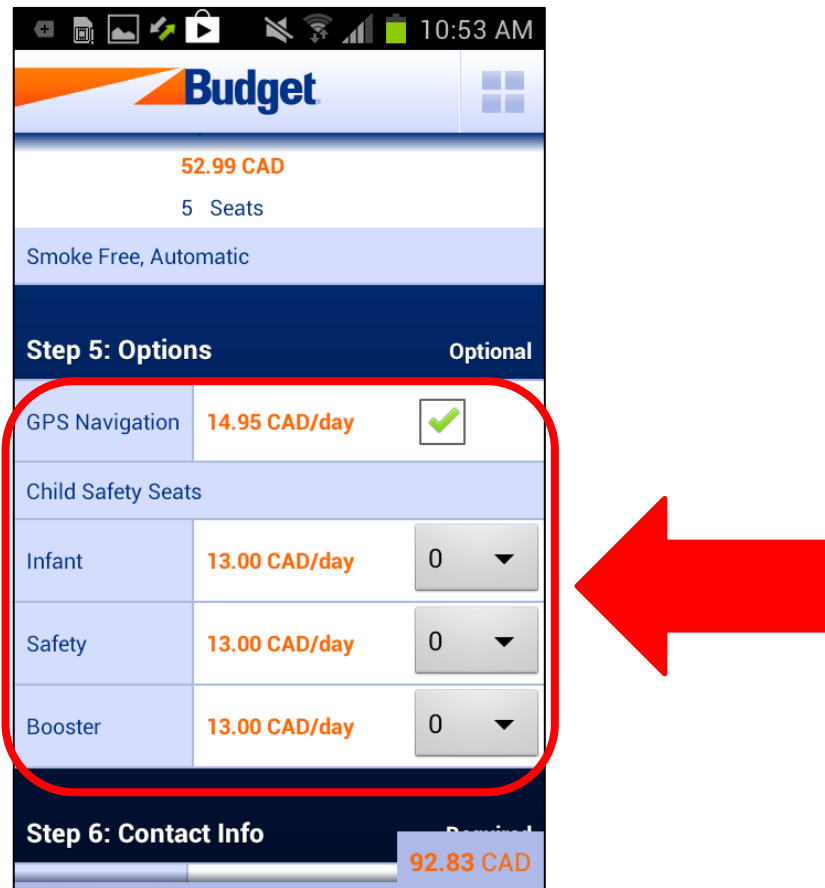
64. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a small to full size car for \$50. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

65. Budget's representation is false or misleading in a material respect for an additional reason. Budget's representation conveys the general impression that rental car companies are required to collect additional taxes and fees.



66. Budget's representation is false or misleading in a material respect. Rental car companies are not required to collect additional taxes and fees from consumers. Budget rather chooses to charge consumers additional Non-Optional Fees to recoup part of its own cost of doing business.

67. Budget also displays prices for associated equipment and coverages on its mobile applications that are not attainable. For example, Budget's representation from on or about 3 December 2012 conveyed the general impression that it is possible for a consumer to rent a GPS navigation unit for \$14.95 per day, or child safety seats for \$13.00 per day.



68. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a GPS navigation unit for \$14.95 per day or a child safety seat for \$13.00 per day. A consumer would instead have to pay higher prices than Budget represents because Budget requires consumers to pay additional Non-Optional Fees to rent these products.

**(iv) Example of False or Misleading Television Commercial**

69. Budget makes price representations in its television commercials that are not attainable. For example, between March and April 2012, a Budget commercial aired 2,473 times on over 30 different Canadian television channels promoting vehicle rentals for \$19 per weekend day. Budget's representation conveyed the general impression that cars were available for \$19 per weekend day.
70. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent a vehicle for \$19 per weekend day. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

**(v) Example of False or Misleading Oral Representations**

71. Budget orally represents prices that are not attainable. For example, in June 2011, the following on-hold script ran across all Canadian Budget locations. The representation conveys the general impression that it is possible for a consumer to rent a Chrysler 300 for only \$57 per day:

The NEW Chrysler 300 has arrived! **The Chrysler 300 is available to rent at Budget for only \$57 per day.** Applicable BCD number must be quoted. Ask your Budget representative for more details. [Emphasis added]

72. Budget's representation is false or misleading in a material respect because it is not possible for a consumer to rent the Chrysler 300 for only \$57 per day. A consumer would instead have to pay a higher price than Budget represents because Budget requires consumers to pay additional Non-Optional Fees.

**(vi) Example of False or Misleading Customer Service Scripts**

73. Budget makes representations to its customers who seek an explanation of their total rental charges. In form emails sent to its customers, Budget represents that the government and other authorized agencies mandate all

rental companies, including Budget, to collect Non-Optional Fees from customers. Budget states:

Please be aware that in addition to the base car rental rate customers **are required to pay taxes, surcharges, and other rental related fees, which are mandated by the government and other authorized agencies. All rental companies, including Budget, must collect them in order to continue to provide the appropriate services to our customers.** [Emphasis added]

74. Budget's representations are false or misleading in a material respect. Governments and other authorized agencies do not mandate all rental companies, including Budget, to collect all Non-Optional Fees from their customers. Budget instead chooses to impose these Non-Optional Fees on its consumers to recoup part of its own cost of doing business.

#### **V. Aggravating Factors**

75. The Respondents have made, and continue to make, the foregoing false or misleading representations to the public for the purpose of promoting their passenger vehicle rentals, their associated products and their business interests more generally. Avis and Budget have collected and continue to collect millions of dollars a year by imposing the Non-Optional Fees on consumers who rent passenger vehicles and associated products from them.
76. Pursuant to section 74.1(5) of the Act, the deceptive conduct described herein is aggravated by the following:
- a. the national reach of the Respondents' conduct;
  - b. the Respondents have made the same or similar representations frequently and over an extended period of time;
  - c. the Respondents' false or misleading representations, described herein, are material;

- d. self-correction being unlikely to remedy adequately or at all the Respondents' conduct;
- e. the Respondents have collected more than \$35 million in Non-Optional Fees from their customers who have rented a passenger vehicle for use in Canada through the Respondents' websites and mobile applications since 12 March 2009; and
- f. the Respondents are one of the largest rental car companies carrying on business in Canada.

**VI. Relief Sought**

77. The Commissioner claims the relief set out in paragraph 1.

**VII. Procedural Matters**

78. The Commissioner requests that this proceeding be conducted in the English language.

79. The Commissioner requests that this application be heard in the City of Ottawa.

80. For the purposes of this application, service of all documents on the Commissioner may be effected on:

**DATED AT** Gatineau, this 10<sup>th</sup> day of March 2015.

**AMENDED AT** Gatineau, this 29<sup>th</sup> day of April 2015.

“Derek Leschinsky”

**for:** John Pecman  
Commissioner of Competition

**DEPARTMENT OF JUSTICE CANADA**

Competition Bureau Legal Services  
Place du Portage, Phase 1  
50 Victoria Street, 22nd Floor  
Gatineau, QC K1A 0C9

**Derek Leschinsky** (LSUC: 48095T)

Tel: (819) 956-2842

Fax: (819) 953-9267

**Antonio Di Domenico** (LSUC: 52508V)

Tel: (819) 997-2837

Fax: (819) 953-9267

Lawyers for the Commissioner of Competition

**AND COPIES**

**TO: NORTON ROSE FULBRIGHT CANADA LLP**

Royal Bank Plaza, South Tower, Suite 3800  
200 Bay Street, P.O. Box 84  
Toronto, ON M5J 2Z4

**D. Michael Brown**

Tel: (416) 216-3962

Fax: (416) 216-3930

**Kevin Ackhurst**

Tel: (416) 216-3993

Fax: (416) 216-3930

**AND TO: The Registrar**

**Competition Tribunal**

Thomas D'Arcy McGee Building  
90 Sparks Street, Suite 600  
Ottawa, Ontario  
K1P 584